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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/576,706 05/22/00 ZEHNER

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IM52/0706

EXAMINER

HUKE, V

ART UNIT

PAPER NUMBER

1714

DATE MAILED:

07/06/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/576,706

Applicant(s)
ZEHNER

Examiner
VERONICA P. HOKE

Art Unit
1714



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 29, 2001
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 21-27 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 21-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirements.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other: _____

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Claim Rejections - 35 U.S.C. § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation “ **independent of a pelletizing step**” renders the claims indefinite since it is **considered ambiguous** in conveying what is actually being conveyed. It is **not clear whether** this recitation indicates the actual **exclusion** of pelletization **or** whether it is an **option**.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 21-27, substituted in lieu of former claims 14-20, are rejected under 35 U.S.C. 103(a) as being unpatentable over Malucelli et al, for the reasons of record.

As stated supra, the recitation “ **independently of a pelletizing step**” is indefinite since the phrase is not considered to preclude the pelletizing step which Malucelli et al envisions. Moreover, since this reference also teaches mere extrusion into strands as an alternative to pelletizing (col.1, lines 52 and 53 (“ in particle or fiber form”) , the distinction asserted is unproven.

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Claims 21-27, substituted in lieu of former claims 14-20 , are rejected under 35 U.S.C. 103(a) as being unpatentable over .Motegi et al for the reasons of record.

Applicants claims do not preclude the cellulosic filler's pretreatment with glyoxal. The reference's suggestion to incorporate known lubricants and/ or " inorganic fillers such as talc, mica, calcium carbonate, etc." (col.3, lines 20- 66) is addressed to those of ordinary skill in this art based on the diversity of thermoplastic resins which can be compounded with the cellulosic filler (polypropylene, PVC, ABS or mixtures thereof , inter alia others). Accordingly determining the optimum quantity of either of these standard compounding agents, given the common objective of providing moldable or extrudable compositions, is within the average practitioner's ability to ascertain without undue burden.

Claims 21-27, substituted in lieu of former claims 14-20 ,are rejected under 35 U.S.C. 103(a) as being unpatentable over Bistak et al for the reasons of record.

Applicant's claims do not preclude the rubber constituent of Bistak's formulations. The further allegation of patentable distinction due to the amount of wax (lubricant) applicant utilizes, 10-20 phr, lacks merit because reference's exemplary compositions containing amount ranging from 2-7 phr, are not wholly definitive of its teachings. The disclosure at col.7, lines 43-50 rather suggests that such quantity be such that it acts as an extrusion aid to improve the flow characteristics of the composition. Clearly a wide latitude of concentration range is permitted and would be easily ascertained by the routineer apprised of this disclosure. Applicant has not established that any unexpected results flow from the particular range stipulated here.

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Claims 1-13 remain rejected and newly added claims, 21-27, substituted in lieu of claims 14-20, are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodhams for the reasons of record.

To the contrary, patentee is quite instructive in col.5, line 32 through col.6, line 29, that polar substances such as waxes, maleated polymers or fatty acids be employed, ostensibly in sufficient quantity, to perform a lubricating role in promoting the cellulosic and thermoplastic substances' thorough blending. Accordingly the determination of optimum quantity would vary with the particular lubricant and the concentration would be obviously ascertainable by the routineer in this field of endeavor.

Claims 1-13 and 21-27, substituted in lieu of former claims 14-20, are rejected under 35 U.S.C. 103(a) as being unpatentable over Brandt for the reasons of record..

Brandt's composition comprising 1/3 thermoplastic and 2/3 cellulosic fiber (col.1, lines 42-50) reads on applicants 30-60 % filler/ 30-70 % polymer (PVC or PP - col.3) proportions. Moreover the ratio being but an preferred approximation is considered instructive that ratios outside of that range are equally useful. Note that the patent's claims are not limited. Similarly the presence of an extrusion aid in the form of lubricants is advised due to the dryness particularly of the fiber, that the routineer apprised of reference's two exemplary formulations using 7- 12.5

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phr of such materials would hardly be constrained from utilizing a quantity outside of that range, the additive's purpose of use being the same: improved extrusion.

Claims 1-13 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Fujita et al for the reasons stated of record.

Fujita's PVC formulation can comprise as much as 60 parts PVC relative to 10 parts ABS and 30 parts wood flour . Hence there lacking patentable distinction in this aspect. This reference's suggestion to use a lubricant and processing aid (col.3, lines 1-7) is directed to those having ordinary skill in this field and thus not seen to require any ingenuity in determining the type and quantity of agent sufficient to perform that role.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Veronica P. Hoke
VERONICA P. HOKE
PRIMARY EXAMINER

vph

July 3, 2001

703 308-2444